

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

**CIVIL NO. 1:06CV316
(1:04CR43-10)**

BILLY EUGENE PROFFITT, JR.,)	
)	
Petitioner,)	
)	
Vs.)	<u>ORDER OF DISMISSAL</u>
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	
<hr style="width:40%; margin-left:0"/>)	

THIS MATTER is before the Court on the Petitioner's response to this Court's Order.

On October 23, 2006, the Court issued an order in accordance with *United States v. Emmanuel*, 288 F.3d 644 (4th Cir. 2002), asking the Petitioner to clarify whether or not he wished his paperwriting submitted September 18, 2006, to be construed as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. By pleading filed November 6, 2006, the Petitioner advises that he wishes to "reappeal" his sentence and bring to the attention of the Fourth Circuit the fact that he "keep[s] getting charged over and over for the same crime." **Response, at**

2. Therefore, in accordance with the Petitioner's instructions, the *pro se* pleadings herein are filed as a notice of appeal and, as such, are untimely and will be dismissed.

IT IS, THEREFORE, ORDERED that the pleadings herein are deemed a notice of appeal, and as such, are hereby **DISMISSED** as untimely.

IT IS FURTHER ORDERED that the Petitioner is hereby granted a certificate of appealability to the Fourth Circuit Court of Appeals.

Signed: November 14, 2006

A handwritten signature in black ink, appearing to read 'Lacy H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

